United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

76-1216

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

B
P/S

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

JOSEPH CAMPANA,
Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.

BRIEF OF APPELLEE

RICHARD J. ARCARA,
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ROGER P. WILLIAMS,
Assistant United States Attorney,
of Counsel.

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Docket No. 76-1216

UNITED STATES OF AMERICA,

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v.

JOSEPH CAMPANA,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of New York

Preliminary Statement

This defendant was first indicted on September 5, 1973 on charges of receiving counterfeit obligations and conspiring to transfer and deliver counterfeit obligations in violation of 18 United States Code, Sections 473 and 371, respectively. After all motions had been made and responses filed by the government, it moved the case for trial on November 30, 1973 (A-

1).[1] That indictment was first ordered for trial before a visiting judge from the Southern District of New York, Hon. Lloyd F. MacMahon, on March 26, 1974 (App. 1). Actually, various motions made by the defendant were *sub judice* until July 2, 1974 and after that the defendant requested time to object to the government's further Bill of Particulars which objection was not finally raised until November 12, 1974 (App. 1). That motion was denied by the Judge (App. 6). The government then moved orally, prior to trial, to amend the Bill of Particulars to reflect a date in May as opposed to June, 1972. The Judge denied that request but gave the government leave to adjourn the trial (App. 12).

The government opted for the continuance, and returned the instant indictment on November 14, 1974 (App. 1). Again, after the government responded to defendant's motions, it moved the case ready for trial on April 30, 1975 (App. 2). Motions of the defendant, however, were *sub judice* until August 8, 1975 when all motions were denied by Honorable John T. Curtin (App. 2, 22-24). The court then placed the case on the trial calendar on September 15, 1975. The case was reached on March 22, 1976. On March 25, 1976 the jury returned a verdict of guilty on Count I of the indictment and reported that they could not reach a verdict on Count II, the substantive count (31-3).[2] That count was then dismissed.

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[1] The docket sheets for the superseded indictment are attached hereto and made a part hereof. The government felt this necessary in view of the appellant's lack of speedy trial claim, which claim counsel for the appellant assured this writer, at the time of the docketing of the record, would not be made.

[2] Reference to trial transcript.

Eight days after the jury verdict, the defendant moved for a directed verdict of acquittal (App. 2, 384). That motion was denied (399). He was then sentenced to the custody of the Attorney General for a period of one and one half years, all but six months being suspended, followed by a probationary term of two years (409-410).

While the notice of appeal was timely filed, appellant's indexing of the record on appeal was not.[3]

Statement of Facts

The appellee has no basic quarrel with the defendant's Statement of Facts and deems them sufficient for purposes of this appeal. It will, however, supplement the facts under the various points of argument where necessary.

ARGUMENT

POINT I

The superseding indictment upon which the defendant was tried was proper and not in contravention of the order of the Hon. Lloyd F. MacMahon.

The appellant's contention that the directive of the Honorable Lloyd F. MacMahon, prohibiting the government's oral request to amend its Bill of Particulars prior to the trial on the old indictment precluded the United States Attorney from seeking this superseding indictment is totally without merit. Dismissal is not mandated.

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[3] Appellant received permission from this court to late file the index.

The law is clear that until such time as a trial on the first indictment commences wherein double jeopardy would attach, the government is free to supersede an indictment at any time. As the court said in *DeMarrias v. United States*, 487 F.2d 19, 21 (8th Cir. 1973), *cert. denied* 415 U.S. 980 (1974): ". . . Nothing . . . would prevent the government from bringing more than one indictment for the same criminal acts against a single defendant so long as jeopardy had not attached to any one of those indictments." This appears to be the prevailing view. See *United States v. Bowles*, 183 F.Supp. 237, 242 (D.Me. 158) (citing cases).

The only other event that would have prevented the government from bringing this superseding indictment would be a dismissal of the superseded indictment with prejudice. *DeMarrias v. United States, supra.* See also *United States v. Senak*, 447 F.2d 304, 306 (7th Cir. 1973), rehearing denied June 5, 1973, *cert. denied* 414 U.S. 856 (1974); *United States v. Kress*, F.2d 576, 577 (9th Cir. 1971), *cert. denied* 406 U.S. 923. As this court noted in *United States v. Ortega-Alvarez*, 506 F.2d 455 (2d Cir. 1974), *cert. denied* 421 U.S. 910 (1975), when an indictment is dismissed before trial on the government's motion, the dismissal unless specifically expressed otherwise is without prejudice. The superseded indictment was not dismissed. The present indictment is proper. Hon. John T. Curtin, the trial judge, so found (App. 23). The Judge's decision was correct and should not be disturbed by this court. *United States v. Boston*, 508 F.2d 1171, 1179 (2d Cir. 1974), *cert. denied* 421 U.S. 1001 (1975); *United States v. Bronstein*, 521 F.2d 459, 463 (2d Cir. 1975), *cert. denied* .... U.S. .... (1976).

POINT VI

The defendant was not denied his right to a speedy trial.

Campana also seeks to dismiss Count I of the indictment on the ground that he has been denied his right to a speedy trial under Rule 48(b) of the Federal Rules of Criminal Procedure. Judge Curtin's denial of his motion to dismiss on this ground was clearly supported by the record and should not be disturbed here. *United States v. Boston, supra; United States v. Bronstein, surpa.*

In addition to the constitutional requirements, the defendant's claim, at least until the effective date of the Interim Plan of the Western District of New York Pursuant to the Provisions of the Speedy Trial Act of 1974, namely, September 29, 1975, was governed by the Plan for Prompt Disposition of Criminal Cases effective April 1, 1973 and the Rules for Prompt Disposition of Criminal Cases adopted by the Judges of the United States District Court for the Western District of New York pursuant to Rule 50(b) of the Federal Rules of Criminal Procedure. The Interim Plan, of course, was adopted for the purpose of complying with the interim limits of the Speedy Trial Act, 18 U.S.C. § 3161, *et seq.*, applicable only to those defendants in custody and certain "high risk" defendants. Under that plan, such a defendant is not entitled to a dismissal, but only release from custody. Campana was never in custody.

Rule 4 of the Second Circuit Rules provides that the government be ready for trial within six months from the date of arrest, etc. Here, the first charge against the defendant was

the filing of the old indictment on September 5, 1973. The government then announced it was ready for trial on November 30, 1973 (App. 1). It is clear that those rules require that the government be ready for trial within six months, not that the case actually be tried within that period. This is made even more apparent by Rule 9(a) which provides that, "the court has sole responsibility for setting and calling cases to trial . . ." So, without regard to any of the excludable time under Rule 5, the government has, in all respects, complied with the mandate of the rules. Likewise, under the indictment upon which the defendant was convicted, the government moved the matter for trial in a timely fashion (App. 2).

While the appellant does not claim delay prior to the return on the instant indictment, a review of the docket sheets (App. 1) are informative as to the sources of delay. Throughout the period subsequent to the initial filing of his motions in that case, defense counsel was dilatory. Following a suppression hearing held on January 2, 1974, he was directed to file a brief by February 4, 1974. He never did. The government, on the other hand, filed its brief on April 19, 1974. The government promptly filed its responses and Bill of Particulars as directed by the court, its last Bill of Particulars being filed on July 5, 1974 (App. 1). Between that time and the time the superseded indictment was scheduled for trial before Judge MacMahon, counsel expressed no dissatisfaction with the government's Bill of Particulars until the scheduled trial date. As Judge MacMahon said, after denying his motion for a further bill, ". . . why do you wait until the eve of trial to bring this up." (App. 4). In response thereto he told the court: "I would indicate to the court, and I believe the court believes that I am delaying in this matter . . ." (App. 5). That exchange is indicative of the delay that has been harvested, not by the government, but by defense counsel.

The experience following the return of this indictment was much like that experienced following the initial indictment. Pre-trial motions filed by the defendant were *sub judice* from the time of their filing on December 19, 1974 to Judge Curtin's denial of those motions on August 8, 1975 (App. 22-24). In the interim and on April 30, 1975 the government announced its readiness for trial and from that time the United States Attorney's Office reported to the court on a monthly basis that the indictment was awaiting trial. On September 15, 1975 the court placed this indictment on its trial calendar (App. 2). Again, without considering excludable time under Rule 5, the government was ready in a timely fashion.

As previously noted, the defendant should not be heard to complain of the procedure of obtaining the superseding indictment. In all respects the action of the government was proper and did not work to deny the defendant a speedy trial or cause him to abandon 14 months effort as claimed. In fact, the superseded indictment set forth twelve overt acts which gave him much more "specificity", his constant lament under the old indictment.

Although Campana does not directly raise a Sixth Amendment claim, *Barker v. Wingo*, 407 U.S. 514 (1971) is helpful in disposing of his speedy trial contention. In applying the four-prong balancing test, it is clear that the delay has been minimal. The reasons for the delay are attributable to the defendant's pre-trial motions and dilatory tactics. Furthermore, the defendant has failed to meet his burden of establishing substantial prejudice. Indeed, he has shown no prejudice. See *United States v. Marion*, 404 U.S. 307 (1971). In addition, his ability to prepare a defense was not impaired, nor his freedom of movement hampered. There is no

evidence that he had been made the subject of derogatory publicity or public disdain, nor is there anything in the record to indicate that witnesses were not available to him. See *United States v. Parrott*, 425 F.2d 972 (2d Cir. 1970), *cert. denied* 400 U.S. 824 (1970); *United States v. DeMasi*, 445 F.2d 251 (2d Cir. 1971), *cert. denied* 404 U.S. 882 (1971).

POINT III

The proof adduced at trial established but one conspiracy to make and distribute counterfeit obligations of the United States.

Upon trial, the government introduced the testimony of four witnesses: Edward Barczak, James Gambacorta, and Secret Service Agents Robert Pochopin and Joseph Carlon. Gambacorta, Pochopin and Carlon were called to establish the transactional picture from production through distribution and to establish that the money (Gov. Ex. 1), or at least $80,000 of it, was the same money printed by Barczak, delivered to Campana and seized on the West Coast.

Campana complained below that the testimony elicited from these three witnesses was at a variance with the theory of the single conspiracy as charged in the indictment and, in addition, he now claims that the government also proved a conspiracy involving others, namely, Joe Zuppa (215), Charles Saletta (251), Joseph Cala (87-88) and Barbara Morris (92, 101). Barczak, the unindicted co-conspirator, whom the appellant rightly characterizes as the government's key witness, testified that, among other things: Campana told him that he would sell the counterfeit currency to an out of town customer for approximately $25,000 (28); Campana supplied

the paper to be used in the printing sometime in February or March of 1972 (30); he gave Campana some notes (Gov. Ex. 4) relating to technical problems of printing counterfeit that he wished answered and that Campana said he would give them to his technical adviser and return with the answers (33-34); Campana give him a sample sheet of paper which he said he could obtain from a source of his to be used for the printing (36-37); Campana told him that he would receive a one-third share of the profits upon sale and that his [Campana] other partner would get the remaining third (28, 66). When Barczak was asked if he recognized a box of approximately $158,000 in counterfeit Federal Reserve Notes seized from Joseph Cala in California on August 9, 1972 (Gov. Ex. 1, 90), he testified that he recognized some of it as work that he had done, however, his identification was not very solid. He was only able to testify that some of it appeared to be money that he had printed (76-80, 118-124).

The testimony of Gambacorta was utilized to lend credibility to Barczak's testimony. He corroborated much of Barczak's testimony regarding his conversations with Campana and further served to establish the fact that the counterfeit currency which is the subject matter of the indictment was the same currency that was printed by Barczak and delivered by Campana to Gambacorta.

His testimony was that Campana approached him sometime in the Spring of 1971 and told him that he had the capability of printing counterfeit money but needed some paper and that if he [Gambacorta], could come up with some, he [Campana] would take care of him (204-205). Gambacorta related that in January or February, 1972, he in fact obtained paper and gave it to Campana (205). Gambacorta further corroborated Barczak's testimony that he gave Campana two notes (Gov. Ex. 4),

by stating that those were the same notes that Campana gave to him (207). In addition, Gambacorta also testified that Campana brought to him two boxes containing approximately $200,000 in counterfeit Federal Reserve Notes to his apartment sometime in April or early May, 1972 (208-209, 211-214). He also said that that was the same money he gave to Joseph Cala sometime around the middle of July, 1972 (209), which explains how the money got to California.

Since the jury may well have had a question regarding the discrepancy in the quantity of counterfeit occasioned by the fact that Barczak testified that he printed but $80,000 whereas some $183,000 seized in California was before the jury, Gambacorta's testimony that he received two boxes of counterfeit from Campana containing approximately $200,000 (211-214), was informative in view of Barczak's testimony that Campana picked up from him *one* [emphasis added] box of counterfeit currency containing some $80,000 (46).

Also, since Gambacorta's testimony was that the money (Gov. Ex. 1) looked like the money he obtained from Campana, the government sought to more definitively connect up the money. Therefore, it elicited testimony from Gambacorta that on January 11, 1973, he sold 85 of the counterfeit $10 bills to Agent Pochopin and that those bills (Gov. Ex. 11) were a portion of the moneys that he held back from the money he gave to Cala, the same being a portion of the moneys he received from Campana (202). That particular portion of the testimony was the foundation for Agent Pochopin's testimony that those 85 counterfeit $10 Federal Reserve Notes that he purchased from Gambacorta were, in his expert opinion, a portion of the same notes represented by Government Exhibit 1 (183).

Agent Carlon was called simply to show that the money in fact was passed in California (90-91) and that the money, in his opinion, was other than genuine currency (94-95). This testimony was also directed to and relevant to the issues of Campana's knowledge, intent and extent of participation in the conspiracy. See *United States v. Natale*, 526 F.2d 1160 (2d Cir. 1975); *United States v. Tramunti*, 513 F.2d 1087, 1116 (2d Cir. 1975), *cert. denied* 423 U.S. 832 (1975); *United States v. Padakis*, 510 F.2d 287 (2d Cir.), *cert. denied* 421 U.S. 950 (1975); *United States v. Mallah*, 503 F.2d 971, 981 (2d Cir. 1974), *cert. denied* 420 U.S. 995 (1975); *United States v. Cioffi*, 493 F.2d 1111 (2d Cir. 1974). Certainly, there could be no better way to establish Campana's intention that the notes be passed as true and genuine then to show that the notes were passed and distributed.

The fact that the prosecutor elicited from the witnesses, Barczak and Gambacorta, their participation in Criminal activities arising out of the same facts and circumstances for which Campana was being tried adds no weight to the force of his contention that he was unduly prejudiced. For it is clear that on its direct examination, the government may elicit the full criminal record of its own witnesses, or other derogatory information such as a plea of guilty to the same charges upon which the defendant is standing trial. *United States v. Rothman*, 463 F.2d 488 (2d Cir.), *cert. denied* 409 U.S. 956 (1972); *United States v. Silverman*, 430 F.2d 1198 (2d Cir.), *cert. denied* 402 U.S. 953 (1971).

Other than the above, the testimony relating to the seizure of additional counterfeit $10 Federal Reserve Notes by Agent Carlon from Sam Altonian and Barbara Morris were elicited by defense counsel upon cross-examination (101). Likewise, it

was defense counsel who elicited from Gambacorta the fact that he bought the paper from Joe Suppa (215). It was also upon cross-examination that Gambacorta admitted having given several hundred dollars in counterfeit $10 Federal Reserve Notes to one Charles Saletta (232). With respect to those matters, appellant cannot complain.

POINT IV

Even if there was a variance between the indictment and the proof, it was not such as to prejudice the substantial rights of the defendant.

Assuming a variance in the proof, the appellee maintains that the substantial rights of the defendant were not prejudiced. As this court noted in *United States v. Miley*, 513 F.2d 1191 (2d Cir. 1975), the mere fact that there is a variance is not fatal. The test, "is not whether there has been a variance in proof, but whether there has been such a variance as to effect the substantial rights of the accused." *Miley*, at 1207 quoting from *Berger v. United States*, 295 U.S. 78, 82 (1935); see also *Kotteakos v. United States*, 328 U.S. 750 (1946).

While the government recognizes that a variance in proof may cause a prejudicial spill over—the transference of guilt from members of one conspiracy to members of another—the instant case does not present such a threat. As a general rule the possibility of a prejudicial spill over increases with the number of defendants tried, the volume of evidence admitted and the number of conspiracies proven. *United States v. Bertolotti*, 529 F.2d 149, 157 (2d Cir. 1975). In determining whether the prejudice was such as to require reversal of the conviction the presence of these factors must be weighed

against the ability of the jury "to give each defendant the individual consideration our system requires." As Judge Curtin said at the time of sentencing: "It appeared to me here that the jury, and I think that again it shows the very nice distinctions that juries do make, again it reinforces my belief that they carefully consider evidence . . ." (394). And, in commenting upon appellant's claim of prejudicial spill over during the course of the argument on his motion for acquittal said: "The eventual decision,—I see no reason, Mr. Sellers, why this should not be confirmed by the Second Circuit, . . ." (411-412).

Appellant's reliance on *United States v. Sperling*, 506 F.2d 1323 (2d Cir. 1974), *cert. denied* 420 U.S. 962 and *United States v. Bertolotti*, *supra*, is misplaced. The instant case does not involve the practice admonished in *Sperling*, *supra* at 1340, of indicting multiple defendants under the guise of a single conspiracy when the underlying criminal acts comprise several distinct conspiracies. Nor could the trial in this case be likened to that in *Bertolotti* where the indictment named 29 defendants and 31 unindicted coconspirators. This is simply not a case where a possibility exists wherein a minor defendant will be swept along by the criminality of the others. See *United States v. Miley*, *supra* at 1207. As Judge Curtin stated, this defendant received the undivided attention and particularized deliberation of the jury.

While the trial lasted but three days, only two days were devoted to the taking of testimony. There was no voluminous testimony relating to a myriad of unconnected crimes. The possibility of prejudice is further minimized by the absence of hearsay statements. *Bertolotti*, at 156. In short, there was no violation of the appellant's "right not to be tried in mass for the conglomeration of distinct and separate offenses committed by others." *Kotteakos v. United States*, *supra* at 775.

Because of the overwhelming evidence of defendant's guilt elicited through the testimony of Barczak alone, any error in introducing the testimony of Gambacorta and Pochopin was harmless. The conviction, therefore, must stand. *Chapman v. California*, 386 U.S. 18 (1967); *United States v. Williams*, 523 F.2d 407 (2d Cir. 1975).

Conclusion

For the reasons stated herein, the judgment of conviction should, in all respects, be affirmed.

Respectfully submitted,

RICHARD J. ARCARA,
United States Attorney,
Western District of New York,
Office and Post Office Address,
502 United States Courthouse,
Buffalo, New York 14202.

Roger P. Williams,
Assistant United States Attorney,
of Counsel.

Docket Entries.

Criminal Docket

UNITED STATES DISTRICT COURT

THE UNITED STATES,

vs.

JOSEPH CAMPANA.

Conspiracy to commit offenses against the U.S., by making transferring and delivering certain counterfeited obligations or other security of the U.S., with the intent that the same be used as true and genuine Federal Reserve Notes, (Ct. 1), in vio. of Sect. 371, Title 18, U.S.C.; wilfully and knowingly did receive $80,000.00 in false and counterfeit obligations of the U.S., with the intent that the same be used as true and genuine Federal Reserve Notes (Ct. 2), in violation of Sect. 473, Title 18, U.S.C.

Offenses: Nov. 1971 thru June 1972; 2 Cts.

John T. Curtin
CR—1973—300

Attorneys

For U.S.: Coms.

For Defendant: Jeffrey Sellers, Esq.

Title 18

Sec. 371,473

Sept. 5, 1973 Filed Indictment.

Sept. 5, 1973 J.S. 2 made.

Sept. 5, 1973 Govt. requests the Court for bench warrant. Granted. Warrant issued.

Sept. 5, 1973 Deft. appears before Magistrate Maxwell, and bail is set at $5,000 recog. bond. Deft. to appear before Judge Henderson 9/11/73.

Sept. 11, 1973 Filed Warrant. Executed 9/5/1973.

Sept. 12, 1973, Filed Ct. Steno's minutes of of 9/12/1973.

Sept. 12 1973, Deft. being duly arraigned enters a plea of not guilty; bail is continued; motions set as returnable by 9/24/1973.

Sept. 24, 1973, Govt. granted Adj. to 10/9/1973 to respond.

Sept. 26, 1973, Filed $5,000 recog. bond.

Oct. 3, 1973, Filed Deft's notice of motion for Delivery of all Brady material, Bill of particulars, a hearing etc., delivery of G.J. minutes; discovery and inspection, production, etc., ret.

Oct. 9, 1973, Adj. to 10/23/1973.

Docket Entries.

Oct. 23, 1973, Filed Govt's response to certain pre-trial motions made by the Deft. James Campana.

Oct. 23, 1973, Filed Govt's Bill of Particulars.

Oct. 23, 1973, Adj. to 10/29/1973.

Oct. 29, 1973, Adj. to 11/5/1973.

Nov. 5, 1973, Adj. to 11/19/1973.

Nov. 19, 1973, Suppression hearing scheduled for Dec. 3, 1973; the Court authorized the Govt. to determine if further grand jury minutes should be furnished to deft.

Nov. 30, 1973, Filed the Govt's motion to move action for trial.

Dec. 17, 1973 Adj. to 1/2/74.

Jan. 2, 1974, Suppression hearing—Deft. also presented motions for dismissals; the Court ordered deft. to furnish brief by 2/4/1974.

Mar. 27, 1974, Filed Ct. Steno's transcript of proceedings held before Judge Henderson held on Jan. 2, 1974.

Apr. 15, 1974, Return date for briefs—adj. to 5/6/74.

Mar. 26, 1974, Filed Order notifying counsel case has been set for trial before Visiting Judge Lloyd F. McMahon, etc.—Curtin, J. (Illegible).

May 3, 1974, Filed Affidavit of David E. Flierl, former Assistant U.S. Atty., in regard to the evidence presented to the Grand Jury, which resulted in the Indictments against Joseph Campana, etc.

Docket Entries.

May 6, 1974, Return date for briefs—submitted.

June 3, 1974, Filed Affidavit by Jeffrey A. Sellers, Aty. for Deft., requesting the Court preclude the Govt. from amending its Bill of Particulars.

June 3, 1974, Last day for Deft's reply brief. Submitted.

June 10, 1974, The Court directed the Govt. to file a detailed Bill of Particulars by 6/24/1974; the Court denied motion to suppress recorded telephone conversations, on the motion to dismiss, submitted.

June 24, 1974, Adj. to 7/8/74—Return date for Briefs.

July 2, 1974, Filed Decision and Order—Deft's motion to dismiss is denied; motion of defendant to suppress the recording of conversations between the deft. & Barczak is denied; U.S. Atty. is directed to further answer the demand for a bill of particulars giving the deft. more precise information about criminal charges; U.S. Atty's response shall be filed not later than 7/15/1974—Curtin, J.

July 5, 1974, Filed Govt's Bill of Particulars.

July 8, 1974, Filed Govt's affidavit of service of Bill of Particulars.

July 8, 1974, Adj. to July 15, 1974.

July 15, 1974, Return date for briefs—Adj. to 7/29/74.

July 29, 1974, Return date for briefs—Adj. to 8/5/74. No appearance for deft.

Aug. 5, 1974, Return date for briefs. Adj. 9/3/74 to set date for trial.

Docket Entries.

Sep. 3, 1974, Set date for trial. Adj. to 9/23/74 for deft to file motions.

Sept. 23, 1974, The Court advised that this case would be put on the trial calendar for one days notice.

Sept. 30, 1974, Filed order setting case on trial calendar of Hon. Lloyd F. MacMahon.

Nov. 8, 1974, Filed Subpoena—Edward W. Barczak, Ret. unserved.

Nov. 12, 1974, Filed Defendant's memorandum Of Law.

Nov. 13, 1974, Filed order endorsed on Defendant's memorandum Of Law that "the within motion made on the eve of the day the case was called for trial and long after the case was placed on the trial calendar is denied in all respects. So ordered." MacMAHON, J.

Nov. 13, 1974, Case called to trial, a continuance was granted by the Court.

Nov. 15, 1974, Filed Govt's trial memorandum.

Dec. 10, 1974, Filed Ct. Steno's transcript of the proceedings held before Judge MacMahon, on Nov. 13, 1974, at Buffalo, N.Y.

June 18, 1975, Pre-trial conference held in the above two cases (Cr-74-303).

June 18, 1975 Motion by the defendant to dismiss the Indictment in this case, and in superseding case Cr-1974-303. Decision reserved.

June 3, 1975, Filed Ct. Stenos voucher copy 2 CJA 21 in the amt. of $622.50 orig. to Adj. office for payment. CURTIN, J.

AFFIDAVIT OF SERVICE BY MAIL

RE: United States
vs
Joseph Campana

State of New York)
County of Genesee) ss.:
City of Batavia)

I, Leslie A. Johnson being duly sworn, say: I am over eighteen years of age and an employee of the Batavia Times Publishing Company, Batavia, New York.

On the 27th day of August, 19 76 I mailed ____ copies of a printed Brief in the above case, in a sealed, postpaid wrapper, to:

10 copies to: A. Daniel Fusaro, Clerk
United States Court of Appeals
Second Circuit, New Federal Court House
Foley Square
New York, New York 10007

2 copies to: Jeffrey A. Sellers, Esq.
615 Brisbane Building
Buffalo, New York 14203

at the First Class Post Office in Batavia, New York. The package was mailed Special Delivery at about 4:00 P.M. on said date at the request of:

U.S. Attorney Richard J. Arcara, Att: Roger P. Williams, Asst. U.S. Atty.

502 United States Courthouse, Buffalo, New York 14202

Leslie A. Johnson

Sworn to before me this

27th day of August, 19 76

Patricia A Lacey

PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 19 77